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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

IN THE MATTER OF: )  
 )  
FEDERAL-STATE JOINT BOARD ON )  
UNIVERSAL SERVICE )

CC DOCKET NO. 96-45

COMMENTS

DOCKET FILE COPY ORIGINAL

OF THE  
OFFICE OF COMMUNICATION OF THE  
UNITED CHURCH OF CHRIST,  
THE ALLIANCE FOR COMMUNITY MEDIA, AND  
MINORITY MEDIA & TELECOMMUNICATIONS COUNCIL

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### Summary

The Notice of Proposed Rulemaking ("NPRM") erroneously seeks to limit universal service to a targeted group of consumers (low-income, and those residing in high-cost areas). This policy is contrary to the intent of The Telecommunications Act of 1996 ("1996 Act") which seeks to "rapidly... [deploy] advanced telecommunications and information technologies and services to *all Americans*."

Any regulatory policy that limits the support of basic services to a targeted group of consumers will do America a grave disservice in the long-run. Given the current political climate that disfavors all forms of price-subsidies, a proposal that seeks to target support to people in low-income and rural areas will be short-lived. To the extent that the targeted group are people who have had little, if any, influence on telecommunications policy, the proposal will suffer the same demise as other pro-consumer, pro-localism initiatives (eg. minority ownership preferences, community ascertainment, ownership caps, affirmative action, welfare reform, and product liability). There is nothing in the universal service provisions of the 1996 Act that requires the Commission to adopt such a limited approach.

Universal service is intended to ensure that *all Americans* will be able to access and afford contemporary and advanced telecommunications service. This more expansive approach to price support mechanisms is reflected in the broad set of principles set forth in Section 254(b) of the Act.

Therefore, the Commission should disregard the recommendation of its Universal Service Task Force to eliminate implicit support mechanisms and to institute pricing policies that reflect the full underlying costs of each service. The Commission's Task Force has totally disregarded the absence of effective competition in the vast majority of today's

markets. The implementation of such policies prior to effective competition will result in sharp price increases for the majority of American consumers contrary to the goal of affordability.

The Office of Communication et al. maintains that the universal service support that the Commission has earmarked for targeted groups should be enjoyed by all Americans. The unannounced agenda of the Commission apparently is to preserve universal service for only those in financial need. The 1996 Act, however, seeks to base policy upon "*affordable rates*" and "*access to advanced*" services "*in all regions of the Nation*".

A policy that embraces all regions and all sectors of society stands a greater chance of withstanding the political storms that will inevitably seek to reverse this initiative in the future.

The Commission should also recognize that in today's non-competitive marketplace, affordability cannot be measured in terms of how many subscribers leave the network in response to a price increase. Any effort to evaluate affordability based upon such an approach is insensitive to the inelastic response of the market to price increases in the absence of competitive service providers. Affordability cannot be measured in such a manner when there are only two choices for an essential requirement in today's modern society, namely pay the rate hike or lose service completely.

With respect to low-income consumers and those residing in high-cost areas, the Office of Communication et al. strongly endorses a set of services to be supported by universal service funding, in addition to those enjoyed by all classes of residential subscribers. They include:

- 1) free toll limitation,
- 2) reduced deposit,
- 3) the non-forfeiture of local service due to the delinquent payment of long-distance bills, and
- 4) the subsidization of equipment necessary to access advanced network services (eg. the internet).

Finally, the Commission must adopt an objective means of measuring comparability.

Precedent exists for measuring the disparate effects of business practices in the areas of civil rights, investment practices and consumer credit. The Office of Communication et al. recommends that the Commission adopt an "effects test" that would require carriers to publish demographic data (household income, housing density, and race) in all the census tracts of its service area(s) along with information that will enable the Commission and the general public to compare such information on the basis of access and rates. The Commission must also be resolute in obtaining information concerning the deployment policies of carriers in order to ensure that low-income, minority and rural communities, that have been traditionally the last to receive advanced telecommunication services, are proportionately represented at each stage of the deployment.

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of:**                   )  
  )  
**Federal-State Joint Board on** )  
**Universal Service**                   )

**CC Docket No. 96-45**

**COMMENTS**

**OF THE  
OFFICE OF COMMUNICATION OF THE  
UNITED CHURCH OF CHRIST,  
THE ALLIANCE FOR COMMUNITY MEDIA, AND  
MINORITY MEDIA & TELECOMMUNICATIONS COUNCIL**

**I. Introduction.**

The Office of Communication of the United Church of Christ, the Alliance for Community Access, and the Minority Media and Telecommunications Council ("Office of Communication et al.") respectfully submit Comments in response to the Federal Communication Commission's above captioned Notice of Proposed Rulemaking and Order, released March 8, 1996, ("NPRM").

On previous occasions the Office of Communication has participated in Federal Communication Commission and National Telecommunications and Information Administration proceedings pertaining to universal service. In 1986, the Office of Communication successfully petitioned the Commission to adopt a lifeline and linkup policy

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for low-income subscribers.<sup>1</sup> In 1990, the Office of Communication submitted Comments in response to NTIA's Notice of Inquiry Concerning A Comprehensive Study of the Domestic Telecommunications infrastructure.<sup>2</sup> More recently, the Office of Communication responded to to NTIA's 1994 Notice of Inquiry Concerning Universal Service and Open Access. The latter comments are appended hereto as Appendix I. Then, as now, the Office of Communication is primarily concerned about the impact that telecommunications will have upon members of society traditionally disenfranchised from the electronic media - the poor, the elderly, the disabled, and minorities.<sup>3</sup>

These comments also reflect the views of the Alliance for Community Media, a national organization of over 1,400 institutions and individuals that strive to support community access to the electronic media. The views contained herein have also been endorsed by the Minority Media and Telecommunications Council which promotes ethnic diversity in the viewpoints expressed in the communications media.

**II. It is the Express Intent of Congress that all Americans have Affordable Access to Telecommunication Services; In order to Ensure Affordability for the Average Subscriber the Commission must Provide for More than a Targeted Safety Net.**

The Telecommunications Act of 1996 ("1996 Act") embodies Congress's clear intent to

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<sup>1</sup>. Comments of United Church of Christ Office of Communication, August 28, 1986, CC Docket no. 78-72 & 80-286. In the Matter of MTS and WATS Market Structure, CC Docket No. 78-72; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286.

<sup>2</sup>. Comments of the Office of Communications, April 9, 1990, NTIA Docket No, 91296-9296.

<sup>3</sup>. The Office of Communication fully endorses the separately filed comments of the People for the American Way et al., and the Institute for Public Representation in the instant proceeding.

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preserve access to contemporary and advanced telecommunication service for all Americans,

- not just those historically at-risk of losing service. This intent is evidenced in the enumerated universal service principles<sup>4</sup> and in the opening paragraph of the Conference Report,

"...to accelerate rapidly private sector deployment of advanced telecommunication and information technologies and services to all Americans..."  
S. Conf.Rep. NO. 104-230, 104th Cong., 2d Sess. 1 (1996) (emphasis added).

While the NPRM focuses on the need for a safety net for subscribers in high-cost areas or low-income communities, it overlooks the likelihood of sharply increased rates if implicit pricing practices are eliminated in the absence of effective competition. The Office of Communication et al., therefore, strongly urges the Joint Board and the Commission to condition the elimination of implicit pricing practices upon the presence of effective competition.

**A. The Removal of Implicit Support Mechanisms, in the Absence of Effective Competition, will result in Sharp Price Increases.**

It is apparent from an internal review of current pricing practices that Commission staff view implicit subsidy mechanisms as a deterrent to competition.<sup>5</sup> According to the Universal Service Task Force,

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<sup>4</sup>. The Joint Board and the Commission are required to base the preservation of universal service on, among other things, policies that involve access to advanced telecommunications and information services in all regions of the Nation at affordable rates. 1996 Act sec. 101, §§ 254 (b)(1), (2).

<sup>5</sup>. The 1996 Act calls for explicit universal service support mechanisms, but does not impose a time-frame for when implicit subsidies have to be eliminated. Therefore, the Commission is within its power to create such a time-frame and to do so in a manner that complies with the principle of affordability. 1996 Act Sec 101, §§ 254(e) and (b)(2).



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*"...effective competition could be impeded by regulatory subsidy mechanisms or pricing practices that are based on the existence of a total monopoly in the local telephone services."*

Common Carrier Bureau, FCC, Preparation for Addressing Universal Service Issues 71-77 (1996) at 25.

The Task Force also stated that,

*"...the adoption of service prices that reflect pricing principles in competitive markets may facilitate the transition from monopoly to effective competition. Under these pricing conditions, the prices of the incumbent LEC would reflect the full underlying costs of each service provided."*

*Id.* at 24.

The public interest,<sup>6</sup> however, requires consideration of the sharp increase in residential rates that will necessarily ensue when pricing principles suitable for competitive markets are instituted *prior to* effective competition. For example, the NPRM proposes to eliminate the subscriber loop portion of the interstate common line (CCL) charge and to permit LECs to recover such costs from residential users in the form of increased subscriber line charges (SLCs). NPRM para.114. The premise for this proposal is that existing CCL charges distort competitive incentives in the local exchange marketplace. *Id.* para. 113.

The Office of Communication et al., however, views an increase in the SLC as a violation of the principle of "affordability" for several reasons. First, the current SLC (capped at \$3.50 per month) could double under the Commission's proposal. Second, any federal initiative that introduces competitive pricing prematurely will serve as an impetus for states to eliminate various forms of cross-subsidies, thus further compounding the problem of increased

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<sup>6</sup>. The Joint-Board and the Commission are to rely upon the "public interest, convenience, and necessity" in formulating universal service policy. 1996 Act sec 101(a), § 254 (b)(7).

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prices in the interstate jurisdiction.<sup>7</sup>

For example, states could eliminate the alleged cross-subsidy of residential rates by business customers. Such a measure would be consistent with the Task Force view that prices should reflect the "full underlying costs of each service provided."

It should be noted that the 1996 Act contains no guarantees of effective local market competition prior to Regional Bell Operating Company entry into interLATA service. Instead of having to demonstrate effective competition, RBOCs merely have to execute an interconnection agreement with one competitor. The Commission cannot hinge the introduction of competitive pricing policies on what can be appropriately described as *paper competition*. Competitive pricing policies and the availability of rates that are affordable requires nothing less than effective competition as evidenced by at least three facilities-based competitors that serve a substantial number of business and residential subscribers.

**B. The Commission Appears to have Adopted a Flawed Definition of Affordability.**

The Commission appears to define non-affordability in terms of whether a price increase results in "unacceptable harm to subscribership". NPRM para.113. The converse of this approach is that affordability can be defined as some measure of "acceptable harm" (eg. a few as opposed to a substantial number of people go phoneless). In the context of a non-competitive marketplace, the Office of Communication et al. rejects such a definition.

The Commission appears to have forgotten that, today, all but a few markets are served by a monopoly provider. Therefore, demand is inelastic to price increases under such

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<sup>7</sup>. "A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service."  
1996 Act sec 101(a), § 254(f).

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market conditions.

Recent evidence shows that regardless of household income, the cost of local telephone service is not a factor in terms of why people are driven off the network. A recent study sponsored by Bell Atlantic identified the following as Myth #1,

*"The affordability of telephone service hinges on the price of local access. Thus, the price of basic monthly service rates should be the focus of universal service policy."*  
Milton Mueller & Jorge R. Schement, Six Myths of Telephone Penetration: Universal Service from the Bottom Up, Rutgers Univ. School of Communications, Information and Library Studies (1995) ("Mueller & Schement") at 2.

Affordability cannot be measured in terms of declining subscribership in a market where consumers have no choice but to pay a rate hike or do without service. Even the most onerous rate hike may result in few, if any, people going phoneless, simply because telephone service is an essential feature of modern day life.

Affordability can only be measured in terms of consumer demand in a competitive marketplace where there are real market choices. In such a setting subscribers are free to leave a provider's network without forfeiting telephone service. Therefore, the goal of affordability can only be achieved in a marketplace in which effective competition offers real choice of service and prices.

**C. During the Transition to Effective Competition, the Commission should Keep in Place Pricing Mechanisms that have Kept Consumer Prices Down.**

In their haste to prepare for open-market competition, the Commission's Universal Service Task Force and some industry interests have identified several implicit and explicit pricing policies that, in their view, should be eliminated or reduced.<sup>8</sup> The Office of

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<sup>8</sup>. Examples of explicit and implicit price support mechanisms that have served to keep rates low for rural and urban residential subscribers are Dial Equipment Minutes Weighing, Long

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Communication et al. maintains that the premature implementation of such price restructuring in non-competitive markets will result in a rash of rate hikes. Price re-structuring in the absence of effective competition is inconsistent with the universal service principle of affordability.

The principle of affordability requires that present pricing policies designed to keep prices down for rural and urban residential subscribers should be maintained and made available to all competitors until effective competition is in place. Indeed, the 1996 Act specifically calls for rate averaging and rate integration in order to equalize rates between high-cost and rural areas.[ cite] Even though this approach has been criticized as a subsidy favoring rural customers and a disincentive for competition, Congress clearly was more concerned about the affordability of service for subscribers in rural and high-cost areas. The proposal to price each service such that they reflect full underlying costs<sup>9</sup> is contrary to the overarching universal service goal to ensure continued affordable service for all Americans.

The Office of Communication et al. supports the goal of open-market competition, where consumers are afforded real choice of service and price. Such a goal cannot be achieved by the premature implementation of competitive pricing policies, where prices will rise unabated by competition. Rather the Commission must adopt an approach that gradually phases-out subsidies that discourage competition and that simultaneously maintains a cap on price increases.

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Term Support, Rural Telephone Loans, the Carrier Common Line and Subscriber Line Charge, and Study Area Access Rate-Averaging. Common Carrier Bureau, FCC, Preparation for Addressing Universal Service Issues 71-77 (1996).

<sup>9</sup>. Id. at 24.

**D. The NPRM Incorrectly Limits Universal Service to Targeted Groups.**

The NPRM proposes five services that should receive universal service support.

NPRM para.16. The Office of Communication et al. supports the inclusion of these services with a few additions. However, the Office opposes limiting the services receiving universal service support to just consumers with low-incomes or in rural, insular and high-cost areas.

NPRM para. 15.

The Commission's proposal to limit universal support to targeted groups is contrary to the 1996 Act. There is nothing in Section 254 that suggests that targeted groups should be the only beneficiaries of universal service. On the contrary, one of the principles intended to guide the formulation of universal service policy says that "Access to advanced telecommunications and information services should be provided to all regions of the Nation." 1996 Act sec 101(a) § 254(b)(2). (emphasis added).

With respect to target groups, the Act includes "advanced telecommunication and information services" as among those that such groups should receive to the extent that they are provided to consumers in "urban areas". Therefore, the Commission must think far beyond what is included in the NPRM.

In addition to those listed in the NPRM, the Office of Communication et al. maintains that the initial group of services supported by universal service and made available to all consumers should include:

1) three services that should not be forfeited regardless whether other services are terminated due to billing delinquency:

a) the ability to receive calls - this is an essential service that involves minimal, if any, cost attributable to the called party. Receiving calls are in many instances key to receiving employment information that may enable a

delinquent subscriber to pay an overdue bill;

b) the ability to place calls to emergency services - 911 fire, and police services are often used to save lives;

c) access to telephone company and operator services - operator services are justified for the same reason as b) above. Access to the telephone company business office is essential for reviewing billing information and making arrangements to restore lost service.

2). advanced telecommunications services designated by state regulators as essential to education, public health, or public safety. In order to deem an advanced service as part of universal service, regulators should not have to find that it is "subscribed to by a substantial majority of residential customers" (Section 254(c)(1)(B)).<sup>10</sup> By virtue of the common meaning of the term, "advanced" services are never subscribed to by a majority of subscribers

The Office of Communication et al. maintains that it is important that state regulators have the authority to tailor universal service - particularly advanced services - to the needs of the residents of their state. Within a federal framework that ensures technological and competitively neutral decision-making, state regulators should be permitted to determine the meaning of the term "essential" in the context of local needs and priorities. (see Appendix I pp. 22 - 24).

### **III. An Additional Set of Universal Service Supported Services Should be provided for Low-Income Consumers.**

As the NPRM notes, the subscribership of low-income individuals falls far below national levels. NPRM para. 50. The Commission proposes four services that should be provided for this targeted class of subscriber (free access to telephone service information, toll limitation services, reduced service deposit, and other nonconventional services).

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<sup>10</sup>. The Commission has noted that the word "consider" in Section 254 (c)(1) means that does not make it mandatory that all four conditions be satisfied in order to include a service in the definition of universal service. NPRM para. 9.

The Office of Communication et al. agrees that all four services should be made available to low-income individuals, in addition to those provided to all other classes of subscribers (Section II(D), supra). Toll limitation and reduced deposit are uniquely justified because they provide a solution to some of the primary reasons that low-income individuals lose telephone service.<sup>11</sup> Toll limitation should be provided free to qualifying low-income subscribers.

The Office of Communication et al. also fully supports the separate comments prepared by the Institute for Public Representation concerning the need for special services for mobile migrant and homeless individuals.

In addition to the above services, the Office of Communication et al. strongly maintains that low-income subscribers should not forfeit local service because their long distance bill is delinquent. Very often these services are provided for by separate companies, and under the 1996 Act, a Bell Operating Company can only offer long distance service through an arms-length separate subsidiary. Any Regional Bell Operating Company that uses the leverage of termination of local service to collect money for its long distance subsidiary is acting in a manner that is partial to an affiliated company. Such business practices are contrary to the letter and spirit of the 1996 Act.

The benefit of eliminating this practice is that it directly addresses the problem of usage-related costs that drive low-income subscribers off the network.

*"[M]ost marginal users are driven off the network by usage-related costs [local service] rather than access-related costs....Income, employment, and other measures of wealth or poverty are strongly related to low penetration not because the price of basic local*

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<sup>11</sup>. Mueller & Schement pp. 12 - 14.

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*phone service is too high, but because low-income users who run up large usage-related [long distance] bills are unable to cover them."*

Mueller & Schement at 12.

Under no circumstances should a local access provider be able to terminate local service for failure to pay a long distance service.

In its 1994 Notice of Inquiry Concerning Universal Service, the National Telecommunication and Information Administration stated that,

*"Without adequate equipment on the customer's premises, network connection and the many services it affords is meaningless."*

Notice of Inquiry Concerning a Universal Service and Open Access, National Telecommunications and Information Administration, September 19, 1994, para 33.

This statement accurately describes a problem that will increasingly confront low-income individuals who lack a computer and modem to connect to the Information Superhighway. Yet equipment is not normally discussed as part of universal service.

The Office of Communication et al. urges the Commission to consider the need to include customer premise equipment (other than telephony equipment) in universal service. It is an *essential* on-ramp to the Information Superhighway. The Office does not endorse any particular kind of equipment or terminal technology. The Office simply strongly recommends the adoption of a user-subsidy in the form of credits that can appear on the billing statement of any service provider requiring a special device in the home. By providing subsidized billing credits, the Commission will be ensured that the equipment will be used to connect to the network and for no other purposes. The benefit to non-low income consumers is that such a subsidy will contribute to increased market penetration by network providers and serve to lower terminal equipment and online services prices generally. (See Appendix I, pp 24-26).



#### **IV. The Commission Must Adopt Objective Measures of Comparability.**

As the NPRM correctly notes, the 1996 Act calls for "reasonably comparable" services between consumers in urban areas and "consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas...".<sup>12</sup> The Act focuses on comparability of access<sup>13</sup> as well as comparability of rates. The NPRM requests comment on how to best measure comparability, given the variation of service in urban areas and the linkage between service quality and consumer demographics in urban areas. NPRM para. 6.

The Office of Communication et al. is very concerned that although the Act attempts to avoid disparities between different regions of the country by using urban areas as a benchmark,<sup>14</sup> it overlooks the pattern of deploying advanced telecommunication services initially in suburbs outside of the urban core.<sup>15</sup> In order for the Commission to establish an "urban benchmark" that reflects the most advanced centers of telecommunications and

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<sup>12</sup>. 1996 Act Sec. 101(a), § 254(b)(4).

<sup>13</sup>. The list of services enumerated in the Act include interexchange and advanced telecommunication services.

<sup>14</sup>. Mueller and Schement at 3 state that, "maintaining universal service is primarily a problem of rural area" is Myth #3. Telephone penetration rates are in fact lowest in the inner cities. Further, the growth rate of penetration in rural areas since 1984 is faster than in other areas.

<sup>15</sup>. The reader is urged to examine a recent study published by the Office of Technology Assessment, The Technological Reshaping of Metropolitan America, (OTA-ETI-643, U.S. Government Printing Office, September 1995). The OTA study contains extensive factual data on how information technology is favorably impacting economic development in suburbs and "exurbs" at the expense of development in the urban core. Three graphs from the OTA study showing the economic decline in central cities (as measured by declining commercial office space) and the racial demographics of the suburban population are included in Appendix II.

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economic development, the term "urban areas" must be broadly defined.

Other studies have found that the communities in which advanced telecommunication services are being test marketed and initially deployed are generally suburban and nonminority.<sup>16</sup> The Commission, therefore, must rely upon the Act's general prohibition against racial discrimination<sup>17</sup> in combination with Section 254(b)(3) to devise a comprehensive universal service policy.

Examples of deployment schedules, test marketing and market research concerning the Bell Operating Companies is contained in Appendix I. The study was prepared in response to the National Telecommunications and Information Administration's 1994 Notice of Inquiry on Universal Service and proposes an "effects test" to prevent disparity in the quality of service provided to diverse consumer demographics. With respect to the instant proceeding, the "effect test" can be utilized to ensure comparability of rates and quality of service.

**A. Well Established Precedents Exist for Using an Effects Test to Ensure Reasonable Comparability.**

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<sup>16</sup>. Specific examples of the deployment of advanced telecommunication services in low-income and minority communities several years after deployment in affluent communities can be found in Comments of the Office of Communication et al. of the United Church of Christ, In the Matter of Notice of Inquiry Concerning Universal Service and Open Access, the National Telecommunications and Information Administration, Docket No. 940955-4255, December 14, 1994. ("Comments of the Office of Communication") pp. 2 - 10. See Appendix I.

<sup>17</sup>. The 1996 Act amended the general prohibition against discrimination in the 1934 Act to read " to make available, so far as possible, to all people of the United States *without discrimination of the basis of race, color, religion, national origin, or sex* a rapid, efficient , Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." 47 U.S.C. S 151, amended by the 1996 Act sec. 104. § 151 (new language emphasized).

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The "effects test" has been employed in the past to prevent discriminatory business practices against a class of people where the intent of the company is considered irrelevant<sup>18</sup>. The basic premise of the "effects test" is that the intent of the offending party can be separated from the discriminatory effects of their business practices. The "effects test" can be appropriately applied to determine the comparability of telecommunications services and rates. This policy has been successfully used in federal statutes concerning employment, housing and consumer credit for the past several years. (see Appendix I, pp. 10 -13).

An effective "effects test" requires the disclosure of nonproprietary information.<sup>19</sup> Borrowing from the Home Mortgage Disclosure Act,<sup>20</sup> carriers should be required to supply census data that can facilitate objective measures of service and rates. Such a disclosure requirement would impose minimal administrative burden on carriers. An analysis of the HMDA disclosure requirements by the Office of Management and Budget concluded that

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<sup>18</sup>. Having to show discriminatory intent would raise a barrier to enforcement that would be impossible for regulators or the general public to overcome.

<sup>19</sup>. In the employment field, the "effects test" also has a burden of proof component that affords offenders the defense of the "business necessity" doctrine enunciated in Griggs v. Duke Power Co., 490 U.S. 662 (1989). The 1996 Act, however, does not expressly call for application of the Griggs standard. (Compare the Civil Rights Act of 1991, 42 U.S.C. § 2000e).

<sup>20</sup>. Home Mortgage Disclosure Act of 1975, 12 U.S.C. § 2801 ("HMDA"). For a discussion of the critical utility of HMDA disclosure requirements in preventing discriminatory loaning practices, see *Testimony of the Center for Community Change* before the U.S. Senate Committee of Banking, Housing, and Urban Affairs, February 24, 1993, at 4.

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banks spend about six hours a year complying with the law.<sup>21</sup>

A disclosure requirement designed to promote universal service should include demographic information (eg. household income, race, and housing density) on a census tract basis. Such census data should be provided for each service offering and rate description. Only in this manner can the Commission and the general public objectively determine whether unreasonable disparity exists between the protected classes (low-income consumers, and consumers in rural, insular, and high-cost areas) and the urban benchmark.

The 1996 Act specifically says that people within the protected classes should have "access" on a basis that is comparable to people residing in urban areas. In order to have comparable access, advanced services must not only be made available to people in the protected classes, but also within reasonably the same time-frame as people in the benchmark communities. Therefore, the quantitative data provided by the carriers must also include deployment schedules for people in the protected classes and benchmark communities. Since new services are generally deployed in stages throughout a service area, the Commission should seek to ensure that people in the protected classes are proportionately represented at each stage of deployment.

The Commission should adopt scales of comparability, such as "satisfactory", "needs improvement", "unreasonable" and "substantially unreasonable".<sup>22</sup> Based upon such a rating

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<sup>21</sup>. Fishbein, Allen J., *The Community Reinvestment Act After Fifteen Years: It Works, But Strengthened Federal Enforcement is Needed*, Fordham Urban Law Journal, vol. 20 No. 2. 1993 at 306.

<sup>22</sup>. Such ratings would parallel measures of investment performance in under-served communities under the Community Reinvestment Act of 1977, 12 U.S.C. § 2901.

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system, appropriate enforcement measures can be taken, and unreasonably disparate services and rates can be avoided.

**V. Conclusion.**

In summary, the Joint-Board and Commission should expand the target group for universal service to include all residential consumers. A set of universal service funded services, in addition to those for all subscribers, should be adopted for low-income subscribers. Federal regulators should rely upon objective measures to determine whether access and rates in protected classes of communities are comparable to those in urban areas.

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April 12, 1996

## Appendix I

**Before the  
NATIONAL TELECOMMUNICATIONS & INFORMATION ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE  
Washington, D.C.**

**In the Matter of:**

**A Notice of Inquiry Concerning  
Universal Service and Open  
Access**

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**Docket No. 940955-4255**

**COMMENTS OF THE OFFICE OF COMMUNICATION  
OF THE  
UNITED CHURCH OF CHRIST**

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**December 14, 1994**

**SUMMARY**

As the 104th Congress begins deliberation on Information Superhighway legislation it should not overlook business practices in the telephone industry that foreshadow the exclusion of many communities from the initial roll out of advanced communication services. Market research and test marketing practices aimed at affluent neighborhoods foretell an America in which the gap between the "haves" and the "have nots" will be further widened.

The Clinton Administration's Agenda for Action speaks of a National Information Infrastructure that empowers all communities. This vision of the NII cannot be achieved in a totally unregulated environment.

The following comments propose statutory safeguards intended to require the major carriers to include low income, minority and rural communities in each stage of service deployment in proportion to their representation in the total service area. Borrowing from well-established precedents in the employment and home loan banking fields, the proposed safeguards include an "effects test" and a "disclosure" requirement.

Under the "effects test" the complainant carries the burden of proving disparate impact on the protected classes due to a carrier's failure to provide nondiscriminatory service. Absent express statutory language the burden will be much more difficult to obtain relief from the kinds of redlining practices that have already occurred in connection with video dialtone.

The proposed legislation also contains a requirement to disclose nonproprietary census data that will facilitate an objective analysis of



the demographics of a carrier's proposed service area. This requirement is not unlike the Home Mortgage Disclosure Act that has been so effective in curtailing redlining by lending institutions.

The Office of Communication shares the belief of many other public interest activists that the definition of universal service should be expanded to include advanced communication services. The shape and direction of this newly defined universal service, however, should be determined by state regulators. There is no national solution to informational needs of America. Communities across the country do not share the same priorities when it comes to subsidizing the cost of the Information Superhighway. A wealthy suburban neighborhood may desire to connect every household with a PC to an on-line encyclopedia service, while a disadvantaged urban area may chose to subsidize the cost of CPE to increase home-based PC penetration.

The Office of Communication also favors extending the concept of universal service to CPE. As the NOI notes, access to the network is meaningless without adequate terminal equipment. On-line services requiring costly terminal equipment should be reimbursed by a central fund for offering credits to low-income users. Such a user-subsidy is not unlike LinkUp America for POTS service. Here, the user is subsidized through various information service providers which ensures that the subsidy is used to connect to the network.

The Technology Reinvestment Fund, which is partly funded by the Department of Commerce, recently awarded a \$6 million dollar grant to CommerceNet - an on-line service ostensibly created to promote spontaneous business transactions over the Internet. A close